

Appl. No. 10/697,225
Docket No. 9396L
Amdt. dated May 29, 2007
Reply to Office Action mailed on February 27, 2007
Customer No. 27752

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REMARKS

Claim Status

Claims 7-12 are pending in the present application and stand rejected. Claims 7-12 are rejected under 35 U.S.C. § 103. Claim 7 is provisionally rejected under the judicially created doctrine of obviousness type double patenting.

Rejection Under 35 USC §103 Over Igaue et al. in view of Timmons et al.

Claim 7 has been rejected under 35 U.S.C. § 103 over Igaue et al. (GB 2,244,201) 2003/0114821) in view of Timmons et al. (US 4,022,211). This rejection is traversed.

The Igaue et. document is characterized in the office action as teaching all elements of Claim 7 except for the visible highlighting. This reading of the Igaue et al. document is expressly not agreed with or acquiesced to. Nevertheless, even assuming the propriety of this reading of Igaue et al., both the proposed combination with Timmons et al. and the resulting article do not meet the requirements of a *prima facie* case of obviousness.

Timmons et al. is taken as teaching a visible highlighting 22 being visible at least when viewing the body-facing surface of the topsheet wherein said visible highlighting 22 is visible prior to wetting of the wetness sensation member 26. And Timmons et al. is also taken as teaching the appearance of the visible highlighting 22 is substantially unchanged upon wetting. Column 3, lines 45-56 of Timmons et al. are cited for this disclosure.

A closer reading, however, of the Timmons et al. patent reveals that the factual finding relied upon in the Office Action are misplaced. Firstly, Timmons et al. does not support the finding that the visible highlighting is visible at least when viewing the body-facing surface of the topsheet. Rather, just the opposite appears to be the case. Timmons et al. discloses visual based wetness indicators which are visible from the **outer surface** of the backsheet not the body facing surface of the topsheet. Figs. 2 and 3 illustrate this

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point. The article is being worn by a baby and the patterned coloring agent 16 is visible toward the garment facing surface. While Figs. 5 and 6 describe a different embodiment, they do not change the basic description of the visible indication as being exteriorly facing. In fact, the Office Action points to no disclosure (despite the fact finding cited above) that the outline 22 (taken as the highlighting) faces the body facing surface of the article. This is in direct contrast to, e.g. lines 20-25 of column 3 which expressly states that the coloring agent faces the backsheet or garment facing side of the article.

Nor is this difference the only difference between the Timmons et al. disclosure and the express elements of Claim 7. Timmons et al. is directed to a diaper having a visual based wetness indicator feature. The Timmons et al. article is a standard "disappearing" ink type wetness indicator. The main difference between Timmons and other wetness indicators is that in Timmons portions of the ink-based graphics on the outer surface of the article disappear when wet, and other portions do not. Timmons, Col. 3, ll. 50-55. The Office Action appears to be confusing conventional visually based wetness indicators with the presently claimed combination of a wetness sensation member having visible highlighting and the other features claimed.

Timmons et al. is an example of one type of wetness indicating diaper known in the art. Namely, a visually based indicator. Other versions of this type include appearing images. The art has also described tactile based wetness indicators (or so called "wetness sensation" features). Iguae et al. is taken by the Office Action to be an example of this type. However, the two versions of wetness indicators are not interchangeable and the claimed visible highlighting serves a different purpose (and, therefore, has different structural requirements, such as location) than the visual wetness indicators. As described in the instant specification, some children may respond more positively to a wetness sensation (tactile based wetness indication) than to a visual response. One potential drawback, however, with a tactile response is that its existence in the article in the first place is less apparent. This may lead to two concerns. Firstly, a caregiver may not know the feature is present and may not re-enforce the training opportunity with the child. Secondly, the caregiver may not get adequate feedback that the product in fact has this functionality when comparing its effectiveness to other products. The invention of Claim 7 combines the wetness sensation structure and functionality with a specifically claimed visible highlighting which provides this feedback and which is not described in Timmons

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et al. Furthermore, there is no motivation to combine Iguae et al. with Timmons et al. because Timmons et al. simply teaches a different type of wetness indicator (i.e. a visually based one). The combination of Timmons and Iguae (even if proper) would not yield the claimed visibly highlighted wetness **sensation member**. Rather, this combination would only yield a feel wet article with a secondary, externally visible, visually based wetness indicator. This is not the invention of Claim 7.

Timmons et al. teaches an article with graphics where some of the graphics do not respond to wetness. This by itself is not sufficient to meet the requirements of Claim 7 which expressly require the visible highlighting indicate the presence of the **wetness sensation member** and be visible when viewing the **body-facing surface** of the article. Additionally, the visible highlighting must be substantially unchanged upon wetting. The Office Action, by contrast has equated this feature to a visually based wetness indicator which unquestionably changes in response to wetting (although not every portion of the image disappears, the interior does while the exterior outline does not). These differences between the references and Claim 7 are significant and defeat both the proposed combination and the ability of the documents even if combined to suggest all features of Claim 7. It is, therefore, respectfully requested that the rejection of Claim 7 under 35 U.S.C. § 103 be withdrawn.

Rejections Under 35 USC §103 Over Igaue et al. in view of Timmons et al. in further view of Roe et al.

Claims 8-12 have been rejected under 35 U.S.C. § 103 over Igaue et al. in view of Timmons et al. and further in view of Roe et al. (US 6,627,786). These rejections are traversed. Claims 8-12 all depend from Claim 7. The rejections of these claims in the Office Action all proceed from the base rejection of Claim 7 as discussed above. The addition of the Roe et al. patent, even if proper in the first instance does nothing to cure the deficiencies noted above with respect to the rejection of Claim 7. Roe et al. is added for teachings about the structural aspects of the wetness sensation member including, for example, spacing sizing, and Z-folding. None of this teaching, however, addresses the failure of the applied references to teach, alone or in combination, the claimed combination of wetness sensation member having the visible highlighting claimed and

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described above. As such, a proper *prima facie* case of obviousness with respect to Claims 8-12 has not been established and these rejections should be withdrawn.

Provisional Double Patenting Rejection

Claim 7 is provisionally rejected under the judicially created doctrine of obviousness type double patenting over Claims 1 and 6-8 of Application No. 10/815,918. Application No. 10/815,918 has been expressly abandoned. There is, however, a continuation of the '918 application pending as Application No. 11/703,393. It is expressly not admitted that the original double patenting rejections were proper or that any valid double patenting rejections are applicable between the claims of the instant application and the '393 application. The Applicants decline to address the ODP rejections on the merits unless and until potentially conflicting claims are in fact patented.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the objections and rejection under 35 USC § 103. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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